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BACKGROUND

The Heritage Elementary School (the “School”), a nonprofit Arizona corporation, is an Arizona charter school that serves students from kindergarten through eighth grade. Plaintiff, a school teacher, was hired in the summer of 2007 to work as a first grade teacher at the School located in Glendale, Arizona. Plaintiff, a non-lawyer, filed this Title VII action against the School and two individuals,¹ alleging, or attempting to allege, claims of wrongful discriminatory termination, retaliation and a hostile work environment in her employment based on Plaintiff’s religious beliefs. (docket # 1) Prior to filing suit, Plaintiff filed separate “charges”² with the Arizona Attorney General’s Office and the Equal Employment Opportunity Commission (“EEOC”) on November 26, 2007 (religious discrimination) and on January 11, 2008 (retaliation), alleging that the School violated Title VII in connection with her employment. (Exhs 1 and 3, docket # 29)

After exhausting her administrative remedies, the EEOC issued Plaintiff two Notices of Right to Sue on December 30, 2008. (Exh 2, docket # 29; docket # 1 attached to original Complaint; docket # 55, Exh 1) As is customary, each Notice provided: “[Y]our lawsuit must be filed WITHIN 90 DAYS of your receipt of this notice; or your right to sue based on this charge will be lost” (*Id.*) On March 17, 2009, Plaintiff timely filed her initial Complaint, docket # 1, and prior to the School’s appearance in this action, an Amended Complaint on June 19, 2009. (docket # 11) The parties disagree what claims *pro se* Plaintiff alleged, or attempted to allege, in the Complaint and Amended Complaint.

¹ Plaintiff abandoned her claims against these individual defendants with the filing of her Amended Complaint and Second Amended Complaint.

² Plaintiff used the singular word “charge” in her original Complaint but Defendant does not dispute that Plaintiff filed two separate charges with the Arizona Attorney General’s Office and EEOC: Charge No. 35A-2008-00134 (religious discrimination, filed on November 26, 2007) and Charge No. 35A-2008-00251 (retaliation, filed on January 11, 2008). (Exhibits (“Exhs”) 1-3, docket # 29; docket # 1 attached to original Complaint) Counsel are reminded that “a pro se complaint, ‘however inartfully pleaded,’ must be held to ‘less stringent standards than formal pleadings drafted by lawyers[.]’ ” *Estelle v. Gamble*, 429 U. S. 97, 106 (1976); Fed. Rule Civ. Proc. 8(e) (“Pleadings must be construed so as to do justice.”)

1 When the School filed its initial dismissal motion on November 2, 2009,
2 Plaintiff realized she needed legal representation. (docket # 32) Plaintiff promptly retained
3 counsel who appeared on her behalf and timely responded to the extended deadline to
4 respond to Defendant's dispositive motion. (docket ## 34, 35) In Plaintiff's January 8, 2010
5 Response to Defendant's Motion to Dismiss, Plaintiff's counsel requested leave to amend
6 the *pro se* Amended Complaint, although the amendment deadline had expired two weeks
7 earlier. (docket # 35 at 8-9) On February 1, 2010, the Court found that Plaintiff demonstrated
8 good cause and granted Plaintiff's request for leave to amend the *pro se* Amended
9 Complaint. (docket # 45) The Second Amended Complaint was timely filed and the Court
10 denied as moot the School's initial Motion to Dismiss solely because it was directed to the
11 *pro se* Amended Complaint, docket # 11.³ (*Id.* at 3)

12 Pursuant to Fed.R.Civ.P. 12(b)(6), the School moves to dismiss Plaintiff's
13 Second Amended Complaint on two grounds: (1) the Second Amended Complaint attempts
14 to state claims that are allegedly barred by the 90-day statute of limitations because they were
15 lodged 393 days after the EEOC issued its Notices of Right to Sue and Plaintiff's new
16 allegations do not relate back to the original Complaint; and (2) Plaintiff's allegations fail to
17 state *prima facie* claims for religious discrimination and punitive damage claims. (docket #
18 48 at 2)

19 Relying upon *Williams v. Boeing Co.*, 517 F.3d 1120, 1130 (9th Cir. 2008),
20 the School contends that Plaintiff's original *pro se* Complaint and Amended Complaint
21 alleged only "general and vague conclusions, recitations of legal theories without sufficient
22 fact allegations to support them. The core of material facts is lacking in the original
23

24 ³ Because the Court denied Defendant's initial Motion to Dismiss, docket # 29, solely
25 because it was directed to the *pro se* Amended Complaint which was replaced by the lawyer-
26 prepared Second Amended Complaint, docket # 46, Defendant's second Motion to Dismiss,
27 docket # 48, is not, as Plaintiff contends, "a thinly veiled attempt to urge a Motion for
28 Reconsideration." (docket # 54 at 3) Contrary to Plaintiff's argument, the Court has not
"already considered and ruled on Defendant's relation back argument and its claim that it
would be futile to permit Plaintiff to amend the Complaint." (*Id.* at 6)

1 Complaint, consequently, her Second Amended Complaint [prepared and filed by her
2 attorney] does not relate back. See Fed.R.Civ.P. 15(c).” (*Id.* at 4) Identifying eight specific
3 allegations in the *pro se* Complaint, the School argues “[t]he original Complaint attempted
4 to set forth only a retaliation claim – no factual allegations are included regarding any claim
5 of discrimination . . . The retaliation claim raised in the Complaint was insufficiently pled
6 because Plaintiff’s conclusory statements lacked sufficient fact allegations.” (*Id.* at 7) The
7 School argues that because the “timely filed” *pro se* Complaint and Amended Complaint
8 “contain[] no core of material facts related to either retaliation or discrimination on which
9 Plaintiff can relate back[,]” the Second Amended Complaint does not relate back to March
10 17, 2009, the original filing date, and is barred by the 90-day limitation period. (*Id.*)

11 Conversely, Plaintiff claims that her “original *pro se* Complaint set[s] forth
12 sufficient facts to provide Defendant with fair notice of her claims (i.e., religious and
13 retaliation discrimination) and the grounds upon which they rest. Her Second Amended
14 Complaint is related to the timely claims of religious and retaliation discrimination contained
15 in the *pro se* Complaint.” (docket # 54 at 4) Despite Plaintiff’s use of the singular word
16 “charge” in her *pro se* Complaint, docket # 1 at 4, Plaintiff’s counsel points out that “the *pro*
17 *se* Complaint includes a heading titled: ‘**Religious Discrimination**’ and another heading
18 titled: ‘**Statement of Claims.**’ [docket # 1 at 2, 4] (emphasis in original) Plaintiff
19 undoubtedly attempted to set out more than one claim (i.e., Statement of Claims) in the
20 Complaint, including a religious discrimination claim.” (*Id.*) (internal single quotation marks
21 added).

22 Plaintiff’s counsel also argues that “Plaintiff’s Second Amended Complaint
23 does not include a new legal theory depending on different facts. Plaintiff’s Second
24 Amended Complaint includes additional facts relating to the religious discrimination and
25 retaliation claims that arose out of the incidents set out in her *pro se* Complaint, or, at a very
26 minimum, that Plaintiff ‘attempted to . . . set out’ in the *pro se* Complaint.” (*Id.* at 5)
27 Plaintiff’s counsel cites Fed.R.Civ.P. 15(c)(1)(B) and *Sanders v. City of Phoenix*, 2008 WL
28 5001624, * 4 (D. Ariz. 2008) (holding that Rule 15(c)’s relation back principle applied to

1 Plaintiff's amended Complaint because "Plaintiff's original pleading did *attempt* to set forth"
2 a race discrimination claim, especially when the facts were reviewed in the "light most
3 favorable to Plaintiff, and keeping in mind that she was pro se at the time") (emphasis in
4 original). (*Id.*)

5 In her Response, Plaintiff's counsel requests the Court "take judicial notice that
6 the EEOC mailed Defendant copies of both right to sue notices prior to Plaintiff's *pro se*
7 Complaint based on the official EEOC records attached to the Second Amended Complaint."
8 (*Id.* at 6) Filed contemporaneously with her Response was Plaintiff's Request for Judicial
9 Notice, docket # 55, which proffered that:

10 1. On **December 8, 2008**, the federal Equal Employment Opportunity
11 Commission mailed copies to Defendant of its Notices of Right to Sue relating
12 to both Plaintiff's retaliation (Charge No. 35A-2008-00251) and religious
discrimination (Charge No. 35A-2008-00134) charges, copies of which are
attached hereto as Exhibit 1.

13 (docket # 55 at 1) (emphasis added).

14 The School objects to Plaintiff's Request for Judicial Notice because Plaintiff
15 requests "notice of (a) inaccurate information; (b) matter that is not proper for judicial notice;
16 and (c) [the] documents [are] proffered for an irrelevant purpose." (docket # 56 at 1) The
17 School points out that the date of "December 8, 2008" is incorrect because "[t]he two Notices
18 of Right to Sue do not reflect anywhere a date of December 8, 2008 . . . each Notice attached
19 to the Request is dated 'DEC 30 2008.'" (*Id.*) The Court concurs with the School that the two
20 EEOC right-to-sue Notices do not reflect an issuance date of December 8, 2008. Plaintiff's
21 right-to-sue the School commenced on December 30, 2008. (Exh 2, docket # 29; docket #
22 1 attached to original Complaint; docket # 55, Exh 1)

23 Although the Court will sustain the School's objection to the erroneous date
24 of December 8, 2008, it will overrule the School's other objections and will take judicial
25 notice of the two EEOC Notices because the parties have previously filed these Notices in
26 this case and they are a part of the record: Charge No. 35A-2008-00134 (religious
27 discrimination) was filed on November 26, 2007, docket # 29, Exh 2; and Plaintiff filed the
28

1 Notice for Charge No. 35A-2008-00251 (retaliation) on January 11, 2008, docket # 1
2 attached to original Complaint. It is an “established rule” that a “federal district court can
3 take judicial notice of its own records[.]” *Chandler v. United States*, 378 F.2d 906, 909 (9th
4 Cir. 1967); *Taylor v. Critelli*, 2010 WL 597129, * 4 (E.D.Cal. 2010). Additionally, a district
5 court may take judicial notice of matters of public record. *United States v. 14.02 Acres of*
6 *Land*, 547 F.3d 943, 955 (9th Cir. 2008) (district court “may take judicial notice of matters
7 of public record” and consider them without converting a Rule 12 motion into one for
8 summary judgment[.]” (citing *Lee v. City of Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001));
9 Fed.R.Evid. 201(b) (defining the scope of judicial notice); *Cunningham v. Litton Indus.*, 413
10 F.2d 887, 889 n. 2 (9th Cir. 1969) (taking judicial notice of EEOC proceedings). Here, the
11 authenticity of the EEOC charges and the respective right-to-sue Notices are not contested,
12 are relevant to the issue of fair notice of the two charges to, and against, the School, and such
13 charges and the right-to-sue Notices are matters of public record. Therefore, this Court takes
14 judicial notice of the two EEOC charges and the two right-to-sue Notices.

15 **MOTIONS TO DISMISS**

16 On a motion to dismiss, a district court must accept the allegations in the
17 complaint as true and draw all reasonable inferences in favor of the plaintiff. *Scheuer v.*
18 *Rhodes*, 416 U.S. 232, 236 (1974), *overruled on other grounds by Davis v. Scherer*, 468 U.S.
19 183 (1984); *Cruz v. Beto*, 405 U.S. 319, 322 (1972). To survive a motion to dismiss, a
20 plaintiff needs to plead “only enough facts to state a claim to relief that is plausible on its
21 face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). “While legal conclusions can
22 provide the framework of a complaint, they must be supported by factual allegations.”
23 *Ashcroft v. Iqbal*, ___ U.S. ___, 129 S. Ct. 1937, 1950 (2009). A claim has “facial
24 plausibility” “when the plaintiff pleads factual content that allows the court to draw the
25 reasonable inference that the defendant is liable for the misconduct alleged.” *Moss v. U.S.*
26 *Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009) (quoting *Iqbal*, 129 S.Ct. at 1949).
27 Dismissal is appropriate, however, where a plaintiff fails to state a claim supportable by a
28 cognizable legal theory. *Balistreri v. Pacifica Police Dep’t.*, 901 F.2d 696, 699 (9th Cir.

1 1990).

2 In general, a district court may not consider materials other than the facts
3 alleged in the complaint when ruling on a motion to dismiss. *Anderson v. Angelone*, 86 F.3d
4 932, 934 (9th Cir. 1996). “[A]mple authority exists,” however, “which recognizes that
5 matters of public record, including court records in related or underlying cases which have
6 a direct relation to the matters at issue, may be looked to when ruling on a 12(b)(6) motion
7 to dismiss.” *In re Am. Continental Corp./Lincoln Sav. & Loan Sec. Litig.*, 102 F.3d 1524,
8 1537 (9th Cir. 1996) (collecting cases), *rev’d on other grounds by Lexecon, Inc. v. Milberg*
9 *Weiss Bershad Hynes & Lerach*, 523 U.S. 26 (1998).

10 **TITLE VII’S STATUTE OF LIMITATIONS**

11 A Title VII claimant is authorized to file suit only if the claimant has filed a
12 timely charge with the EEOC or appropriate state agency and obtained a right-to-sue-letter.
13 42 U.S.C. §§ 2000e-5(e), (f); *Sommato v. United States*, 255 F.3d 704, 708-09 (9th Cir.
14 2001). Such a suit must be commenced not more than ninety days after receipt of the
15 right-to-sue-letter. 42 U.S.C. § 2000e-5(f)(1); *Payan v. Aramark Mgmt. Servs. Ltd. P’ship*,
16 495 F.3d 1119, 1121 (9th Cir. 2007) (“If a litigant does not file suit within ninety days ‘[of]
17 the date EEOC dismisses a claim,’ then the action is time-barred.”) (citation omitted)).

18 Federal Rule of Civil Procedure 15(c)(1)(B)⁴, however, allows a Title VII
19 plaintiff to amend her timely-filed complaint to add a claim when that claim “arose out of the

21 ⁴ Federal Rule of Civil Procedure 15(c) provides in relevant part:

22 (c) Relation Back of Amendments.

23 (1) When an Amendment Relates Back. An amendment to a pleading relates
24 back to the date of the original pleading when:

25 (A) the law that provides the applicable statute of limitations allows
26 relation back; [or]

27 (B) the amendment asserts a claim or defense that arose out of the
28 conduct, transaction, or occurrence set out--or *attempted to be set*
out--in the original pleading; or

Rule 15(c), Fed.R.Civ.P. (emphasis added)

1 conduct, transaction, or occurrence set out - *or attempted to be set out* - in the original
2 pleading.” *Sanders*, 2008 WL 5001624, * 2 (emphasis added) (citing Fed.R.Civ.P.
3 15(c)(1)(B) and *Donnelly v. Yellow Freight Sys., Inc.*, 874 F.2d 402, 410 (7th Cir. 1989)
4 (holding that an amended complaint alleging violations of federal anti-discrimination law
5 related back to the filing date of the plaintiff’s original complaint, which alleged violations
6 of a state anti-discrimination statute based upon the same facts and conduct). In *Williams*, the
7 Ninth Circuit instructs that “[c]laims arise out of the same conduct, transaction, or occurrence
8 if they ‘share a common core of operative facts’ such that the plaintiff will rely on the same
9 evidence to prove each claim.” 517 F.3d at 1133 (quoting *Martell v. Trilogy Ltd.*, 872 F.2d
10 322, 325-26 (9th Cir. 1989) (finding that amended complaint related back where amended
11 complaint added new theory of recovery based on facts alleged in original complaint) and
12 citing *Percy v. S.F. Gen. Hosp.*, 841 F.2d 975, 978 (9th Cir. 1988)). “When faced with this
13 issue, the *Martell* court explained that a ‘district court should [] analyze[] the two pleadings
14 to determine whether they share a common core of operative facts sufficient to impart fair
15 notice of the . . . conduct called into question.’” *Sanders*, 2008 WL 5001624, * 2 (also
16 quoting *Martell*, 872 F.2d at 327). “A new claim can be linked to a timely pleading when it
17 will likely be proved by the same kind of evidence offered in support of the original
18 pleadings.” *Id.* (internal quotation marks omitted) (citing *Dominguez v. Miller*, 51 F.3d 1502,
19 1510 (9th Cir. 1995)).

20 DISCUSSION

21 After careful analysis of the two *pro se* pleadings and the Second Amended
22 Complaint, the Court finds that Plaintiff’s religious discrimination and retaliation claims
23 relate back to Plaintiff’s original Complaint and should not be dismissed for failure to
24 comply with the ninety-day limitations period. Plaintiff’s Complaint alleges under
25 “NATURE OF THE ACTION” heading that she was “wrongfully terminated [and]
26 retaliated against . . . due to her religious beliefs and practices.” (docket # 1 at 1) (emphasis
27 in original) Under the heading “RELIGIOUS DISCRIMINATION,” Plaintiff further
28 alleges, among others, for example:

1 1. Defendants attempted to force Plaintiff to participate in training activities
2 on Holiday Days and failed to provide a reasonable religious accommodation
that would have allowed the Plaintiff to practice her religion. (*Id.* at 2)

3 2. Defendants refused to reasonably accommodate Plaintiff's sincerely held
4 religious practices and refused to allow Plaintiff to engage in religious
expression. (*Id.*)

5 3. Defendants unlawfully retaliated against Plaintiff, by firing her, for
6 opposing employment practices that discriminated based on religion. (*Id.*)

7 Viewed in the light most favorable to Plaintiff, and keeping in mind that she
8 was *pro se* at the time, Plaintiff's allegations in her original Complaint, while mostly
9 conclusory in nature, did attempt to set forth Title VII religion-based discrimination and
10 retaliation claims against the School. These allegations are entirely consistent with the
11 narratives and two boxes Plaintiff checked on the Charge-Of-Discrimination forms,
12 indicating that the discrimination that Plaintiff allegedly experienced at the School was based
13 on her religion and in retaliation for her having filed a discrimination charge with the Civil
14 Rights Division of the Arizona Attorney General's Office. (Exh. 1 and 3; docket # 29)
15 *Wallace v. DTG Operations, Inc.*, 442 F.3d 1112, 1123 (8th Cir. 2006) ("The information
16 contained in an EEOC charge must be sufficient to give the employer notice of the subject
17 matter of the charge and identify generally the basis for a claim, but it need not specifically
18 articulate the precise claim or set forth all the evidence an employee may choose to later
19 present in court.")

20 Similarly, Plaintiff's *pro se* Amended Complaint, filed on June 19, 2009,
21 confirmed that Plaintiff was attempting to allege claims of "**RELIGIOUS AND**
22 **RETAILIATION (sic) DISCRIMINATION**," repeated numerous conclusory allegations,
23 and alleged her filing of two separate charges of "religious and retailiation (sic) with the
24 Arizona Attorney General's Office, Civil Rights Division." (docket # 11 at 2)

25 On February 1, 2010, Plaintiff's counsel filed a Second Amended Complaint.
26 (docket # 46) The Second Amended Complaint alleges a "**FIRST CLAIM FOR RELIEF**
27 **(Religious Discrimination)**," a "**SECOND CLAIM FOR RELIEF (Retaliation**
28 **Discrimination)**," provides further clarity and additional factual allegations and content to

1 establish a “facial plausibility [for] the court to draw the reasonable inference that the
2 defendant is liable for the misconduct alleged.” (*Id.* at 6-7) (emphasis in original); *Moss v.*
3 *U.S. Secret Service*, 572 F.3d at 969 (quoting *Iqbal*, 129 S.Ct. at 1949). Moreover, after
4 comparing and analyzing the two *pro se* pleadings with the Second Amended Complaint, the
5 Court concludes they all “share a common core of operative facts sufficient to impart fair
6 notice of the . . . conduct called into question.” *Martell*, 872 F.2d at 327. Although no new
7 claims are alleged in the Second Amended Complaint, Plaintiff’s claims of religious and
8 retaliatory discrimination⁵ “will likely be proved by the ‘same kind of evidence’ offered [or,
9 at least, partially set forth] in support of the original pleadings.” *Dominguez*, 51 F.3d at 1510;
10 *Jones v. Greenspan*, 445 F.Supp.2d 53, 56-57 (D.D.C. 2006). Proper application of Rule
11 15(c)(1)(B), FED.R.CIV.P., allows Plaintiff’s religious and retaliatory discrimination claims
12 to relate back to March 17, 2009 because they “[arise] out of the conduct . . . set out - *or*
13 *attempted to be set out* - in the original pleading[s].” Fed.R.Civ.P. 15(c)(1)(B) (emphasis
14 added).

15 Lastly, the School argues that Plaintiff’s claim for punitive damages alleged
16 in the Second Amended Complaint contain “insufficient facts alleged to support any basis
17 for punitive damages[.]” and because Plaintiff failed “to state a timely claim for punitive
18 damages in her Original Complaint[,] [t]he Second Amended Complaint is untimely and does
19 not relate back.” (docket # 48 at 11) Conversely, Plaintiff contends that “Plaintiff’s Second
20 Amended Complaint sets forth ample allegations to support her punitive damages claim.
21 Plaintiff’s religious discrimination and retaliation claims require her to prove intentional
22 discrimination. . . Plaintiff’s allegations show a reckless indifference by Defendant to her
23 federally protected rights, including subjecting her to different terms and conditions of
24 employment because she exercised her religious rights and also opposed its discriminatory
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26 ⁵ Because Plaintiff’s Response does not argue that the Second Amended Complaint
27 alleges, or attempts to allege, a claim for religious-based hostile work environment, the Court
28 informs the parties that Plaintiff is precluded from pursuing this claim at this juncture in the
case.

1 conduct.” (docket # 54 at 10-11)

2 The School acknowledges that “[p]unitive damages are available . . . where the
3 employer is found to have ‘engaged in a discriminatory practice or discriminatory practices
4 with malice or with reckless indifference to the federally protected rights of an aggrieved
5 individual.’” (*Id.*) (quoting 42 U.S.C. § 1981a(b)(1). “Punitive damages are appropriate only
6 where an employer has engaged in intentional discrimination with ‘malice or with reckless
7 indifference to the federally protected rights of an aggrieved individual.’” (*Id.*) (quoting
8 *Kolstad v. Am. Dental Ass’n*, 527 U.S. 526, 538-39 (1999)).

9 Plaintiff’s initial Complaint requested the district court “[o]rder Defendants to
10 pay [Plaintiff] punitive damages for their malicious and reckless conduct, in amount to be
11 determined at trial.” (docket # 1 at 6) The Amended Complaint reiterated Plaintiff’s request
12 for punitive damages. (docket # 11 at 6) Thus, the Second Amended Complaint’s punitive
13 damages request is not a new damages request and is one about which the School had notice
14 since the beginning of this lawsuit. Because the Court has concluded that Rule 15(c)(1)(B),
15 FED.R.CIV.P., allows Plaintiff’s religious and retaliatory discrimination claims to relate back
16 to the initial Complaint and because a district court must accept the well-pled allegations in
17 the Second Amended Complaint as true, *Iqbal*, 129 S.Ct. at 1949, the Court will deny the
18 School’s request to dismiss Plaintiff’s punitive damages claim.

19 Accordingly,

20 **IT IS ORDERED** that Defendant Heritage Elementary School’s Motion to
21 Dismiss, docket # 48, is **DENIED**.

22 **IT IS FURTHER ORDERED** that Plaintiff’s request for oral argument,
23 docket # 54 at 1, is **DENIED** as unnecessary.

24 **IT IS FURTHER ORDERED** that Plaintiff’s Request for Judicial Notice,
25 docket # 55, is **GRANTED** in part and **DENIED** in part.

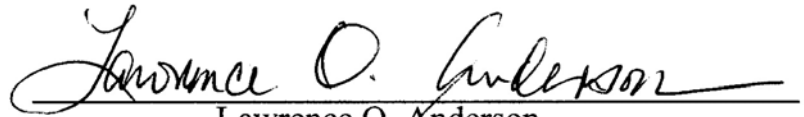
26 **IT IS FURTHER ORDERED** that Defendant Heritage Elementary School’s
27 Objection to Plaintiff’s Request for Judicial Notice, docket # 56, is **SUSTAINED** to the
28 erroneous date of “December 8, 2008” as the date Plaintiff was authorized to file this lawsuit.

1 All other objections are overruled.

2 DATED this 14th day of April, 2010.

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A handwritten signature in black ink, reading "Lawrence O. Anderson". The signature is written in a cursive style with a long horizontal flourish extending to the right.

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Lawrence O. Anderson
United States Magistrate Judge

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